

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**

**Held on November 17, 2022**

**Sacramento, California**

**West Covina, California**

**Zoom Platform**

**Present:**

Ed Lowry, Public Member, Chair  
Judith Freyman, Management Member  
Patricia Hapgood, Acting Executive Officer  
Jeff Mojcher, Chief Counsel  
Kevin Reedy, Supervising Administrative Law Judge  
Sam Lucas, Supervising Administrative Law Judge  
Aaron Jackson, Staff Attorney  
Elizabeth Clarke, Staff Attorney  
Meghan Zapata, Staff Services Manager  
Janis Jonas, Executive Secretary  
Christopher Jessup, Administrative Law Judge  
Rheeah Yoo Avelar, Administrative Law Judge  
Dan Lucido, Chief Counsel, DOSH  
Maira Doherty, Member of the Public  
Linette Davis, Office of Legislative & Regulatory Affairs (OLRA)

Excused Absence: Marvin Kropke, Labor Member

**Minutes of November 3, 2022 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the November 3, 2022, Board meeting.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
The vote was 2-0

**New Business:**

*(The appeals Board hears and discusses new reports presented by staff.)*

Action: No report.

**Old Business:**

*(The appeals Board hears and/or discusses matters on a follow-up basis.)*

1. Discussion of hearing schedules and ALJ availability for the pilot program.

Action: Judge Sam Lucas reported that Judge Lewis' pilot program has ended, and Judge Grimm's pilot program will end in two weeks. There have been no scheduling conflicts to date.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: Dan Lucido notified the Board the anticipated start date for the eAttorney system is March 2023. The program has entered the testing phase.

3. Discussion and update concerning regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376, and consideration of public comments received.

Action: Aaron Jackson updated the Board on status of Regulation changes.

**Legislation:**

*(Review and discuss current legislation which may affect the appeals Board.)*

Action: No report.

**Chairperson's Report:**

*(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)*

Action: Chair Ed Lowry reported attending the conference in Oakland sponsored by Ogletree Deakins Law Firm.

**Board Members Reports:**

*(Hear reports from Board members on activities and issues affecting the Appeals Board.)*

Action: No report.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood reported DOSH is discussing scheduling Advisory Committee meetings three times a year.

Ms. Hapgood also updated the Board on OSHAB staffing.

There is a delay scheduling the remodeling of the Sacramento conference room.

**Staff Reports:**

*(Reports from the Supervising ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)*

1. Discuss whether there are any proposals for new regulations or proposals for modifications to current regulations. In addition, discuss whether any concerns exist regarding regulations.

Action: No report.

2. Discuss status of Video Hearings.

Action: No report.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: Judge Kevin Reedy updated the Board on cases involving COVID related citations.

4. Litigation update:

Action: Jeff Mojcher updated the Board on current court cases.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

**Public Comment:**

*(Public comment will be entertained during discussion of each agenda item of the open meeting.)*

Action: The Board received public comments.

The Board recessed to its closed session.

**Decisions of Administrative Law Judges:**

*(Written decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The board members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)*

- |         |  |
|---------|--|
| 1537831 | A.M.B.E.H. Industries, Inc.<br>Action: The Board reviewed this Decision. |
| 1380273 | Bigge Crane & Rigging, Co.<br>Action: The Board reviewed this Decision.  |
| 1404375 | Conceptual Management, Inc.<br>Action: The Board reviewed this Decision. |

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1366119 Montbleau & Associates, Inc.  
Action: The Board reviewed this Decision.

1203336 Three-D Services Co., Inc.  
Action: The Board reviewed this Decision.

**Petitions for Reconsideration:**

*(The Division of Occupational Safety & Health and the Employer each have the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)*

1515891 Brentwood Home LLC  
Action: The Board voted to issue denial.  
Moved: Ed Lowry  
Seconded: Judith Freyman  
Vote: 2-0

1262720 General Dynamics NASSCO  
Action: The Board voted to take petition under submission.  
Moved: Ed Lowry  
Seconded: Judith Freyman  
Vote: 2-0

1436480 Interline Brands, Inc.  
Action: The Board voted to take petition under submission.  
Moved: Ed Lowry  
Seconded: Judith Freyman  
Vote: 2-0

1565034 J's Automotive Repair  
Action: The Board voted to draft a denial for this petition.  
Moved: Ed Lowry  
Seconded: Judith Freyman  
Vote: 2-0

1371294 KPRS Construction Services, Inc.  
Action: The Board voted to draft a denial for this petition.  
Moved: Ed Lowry  
Seconded: Judith Freyman  
Vote: 2-0

1430976 Precision Custom Conversion, Inc.  
Action: The Board voted to draft a denial for this petition.  
Moved: Ed Lowry  
Seconded: Judith Freyman  
Voted: 2-0

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1462745 Wonderful Citrus, LLC  
Action: The Board voted to issue denial for this petition.  
Moved: Ed Lowry  
Seconded: Judith Freyman  
Voted: 2-0

**Orders Dismissing Appeal:**

1494588 Aurora Behavioral Healthcare – Santa Rosa, LLC  
Action: The Board reviewed this Order.

1545684 Cast Parts, Inc.  
Action: The Board reviewed this Order.

1562245 Fabretti & Dedini, a Partnership  
Action: The Board reviewed this Order.

1333883 Miranda Bros Iron Works, LLC  
Action: The Board reviewed this Order.

1408249 Wag Hotels, Inc.  
Action: The Board reviewed this Order.

**Orders Denying Leave To File Late Appeal:**

There are no Orders Denying Leave to File Late Appeal.

**Matters Pending Reconsideration:**

*(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)*

*The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.*

1360156 CA Forestry and Fire Protection  
*Whether it was an error to assign a particular ALJ to the matter.*

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- 1564732 Calvary Chapel of San Jose dba Calvary Chapel Academy  
Action: The Board voted to issue an Order Requesting Further Briefing.  
Moved: Judith Freyman  
Seconded: Ed Lowry  
Vote: 2-0
- 1300984 General Dynamics NASSCO  
*Whether Employer committed the violations alleged.*
- 1004280 Key Energy Services, LLC  
*Matter remanded to the Board from the Court.*
- 1340591 Lennar Corporation  
*Whether Employer committed the violations alleged.*
- 313381584 Modern Pro Builder  
*Whether the ALJ's granting of a late appeal was appropriate under the circumstances.*
- 1465354 Natural Alternatives International, Inc.  
*Whether the ALJ erred in dismissing the matter.*
- 1336276 Rios Farming Company, LLC  
*Whether the ALJ's decision was correct.*  
Action: The Board discussed this matter.
- 1291481 Sierra Pacific Forest Products  
*Whether Employer was in compliance with the cited safety order.*
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals  
*Whether Employer violated section 3212(a)(2)(A) as alleged.*

**Matters Pending Litigation:**

*(If the Division of Occupational Safety & Health or the Employer disagrees with a Decision after Reconsideration or a Denial of a Petition for Reconsideration, either one or both parties may apply to the California Superior Court for a Writ of Mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)*

**Superior Court:**

1. Barnard Impregilo Healy, JV, CPF 17-515575 (317134021)
2. Ashley Furniture Industries, 34-2017-800002750 (1016514)

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3. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
4. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
5. Davis Development Company, 34-2020-80003373 (1226084)
6. Southern California Edison, 34-2021-80003580 (1320327)
7. RND Contractors, Inc., CIV SB 2119442 (1436785)
8. Hill Crane Service Inc., 34-2021-80003744 (1135350)
9. Sierra Forest Products, VCU290996 (1291481)
10. USA Waste of California, Inc., 34-2022-80003841 (1384029)
11. Ranch of the Golden Hawk, 22STCP02302 (1224802)
12. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)

**Appellate Court:**

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Golden State FC, LLC, STK-CV-UWM-2021-004380 (1310525)
3. L & S Framing, Inc. S-CV-0046603 (1173183)
4. Granite Construction Company, 34-2021-80003634 (1235643)

**Other Items:**

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.  
Action: No report.
2. Categorizing the Board's DARs and Denials on the DIR website.  
Action: No report.
3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.  
Action: No report.
4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.  
Action: No report.

**Orders Of Administrative Law Judges:**

*(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the Order and decide if they will reconsider or remand the issued order.)*

1307423	A. Munoz Landscape Construction, Inc.
1552038	Ajinomoto Foods North America, Inc.
1579174	Alameda County Probation Department - Juvenile
1554103	Alaskan Copper Companies, Inc.
1436397	Amazon.com Services, LLC dba SMF1
1596939	American Tire Distributors, Inc.
1574755	Amy's Kitchen, Inc.
1581630	Anthem United Homes Construction, LP
1565877	Aqua Tri
1564198	Aspire Bakeries, LLC
1538859	Barry Callebaut USA LLC
1534502	Bentley Construction Remodeling Inc.
1591444	Berry Petroleum Company, LLC
1584325	Brian Anthony Walker, an Individual
1569693	Briven Construction, Inc.
1558371	Butler Amusements, Inc.
1338523	C&K Form Fabrication, Inc.
1507858	CA Corrections and Rehabilitation, California
1361296	Ca Dept. of Transportation
1463356	Charter Communications Holdings, LLC
1447944	Che Anthony Coho, an Individual
1532898	Chino Meat Provisions Corporation
1562251	City of Suisun Public Works
1513830	Continental Vitamin Company
1509203	Contra Costa County - Office of the Sheriff
1496224	Core Contracting, Inc.
1478365	Costco Wholesale Corp
1415221	Crisalida Berry Farms, LLC
1441088	Del Pacifico Farm Labor Services, Inc.
1497540	Del Pacifico Farm Labor Services, Inc.
1578379	Dirt Cheap, Inc.
1584182	Diversified Distributors, Inc.
1416236	Ds Services of America, Inc.
1556215	Dynacast, LLC
1548899	Edsal Sandusky, LLC

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1505937	Excellent Window Cleaning, Inc.
1560628	Fairway Staffing Services
1491469	Famous Oasis Ice Cream Parlor LLC
1506336	FedEx Ground Package System, Inc.
1528469	FedEx Ground Package System, Inc.
1583112	Ferrous Studios Incorporated
1552829	Forde Mazzola Assoc., Inc.
1603423	Forensiclean, LLC
1603913	Forterra Pipe & Precast, LLC
1598660	Foster Poultry Farms, Inc.
1494585	GHC of Pleasanton, LLC
1528648	Gotworx Staffing, Inc.
1591769	Habib Cash & Carry, Inc.
1559278	Heathtrust Workforce Solutions, LLC
1502752	Hilltown Packing Co., Inc.
1596170	J & J Farms, LLC
1493172	J.F. Prieto Engineering Construction, Inc.
1450249	JACMAR Foodservice Distribution North, LLC
1562465	John Mourier Construction, Inc.
1478389	Kaiser Foundation Hospitals
1488938	Kaiser Foundation Hospitals
1498055	Kruppa Farms
1563910	Lone Eagle Partners, LLC
1482707	Los Angeles County Registrar Recorder Office
1603572	Lowe's Home Centers, LLC
1539758	Madriaga Construction Service, Inc.
1557328	Magparts
1585954	Main Street Auto Vallejo, Inc.
1559595	Marble USA, Inc.
1550782	Matson Logistics Warehousing, Inc.
1444292	Maxim Crane Works, Inc.
1510770	MMI Services, Inc.
1497915	Northstar Cabinet Construction, Inc.
1613093	ORR Builders
1498840	Otis Elevator
1491455	Pancho Villa, Inc.
1540917	Partner's Personnel Temp
1561127	Partnership 2 Inc.
1555516	Patriot Roofing, LLC
1438940	Prospect Medical Holdings, Inc.

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1351328	PTI Technologies, Inc.
1546697	Ralph's Grocery Company Riverside Distribution
1546893	Rancho Encantado, Inc.
1503898	RMS Supply, Inc.
1594123	Robert Bullis
1557011	Roy Miller Painting, Inc.
1586305	Royal Smog & Mechanic, LLC
1561976	San Luis Ambulance Service, Inc.
1571902	Santa Clara County Office of the Sheriff
1424939	Securitas Security Services USA, Inc.
1554356	Shoreline Builders, Inc.
1588872	Sierra West Construction, Inc.
1527850	Simon Golden Mountain Group, Inc.
1535219	Smith & Vandiver Corporation
1559231	Smithfield Foods, Inc.
1491630	Steelbuilt Framing Technologies
1568205	Steven Woodlief Plastering, Inc.
1483023	Stoll Metalcraft Inc.
1503112	Superior Court of California - County of Fresno
1514497	Sutter Bay Hospitals
1583320	Target Corporation
1593285	Tecta America Sacramento, Inc.
1492554	The Alamo Rotisserie, Inc.
1584989	The Museum of Art and History
1567977	Timber Ridge Framing, Inc.
1486691	Tom & Perry Charter
1583419	Torrance Refining Company, LLC
1531089	Tree Wise
1517235	Type 7 Manufacturing, Inc.
1537485	UC Davis
1570105	UC Davis
1550269	United Metal Products, Inc.
1606983	Urata & Sons Concrete, LLC
1397212	Wash Depot Holdings, Inc.
1496775	Westwood Products
1527817	Williams Tree Service, Inc.
1558620	XL Staffing, Inc.

Action: The Board reviewed the Settlement Orders issued by the Administrative Law Judges.

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**Personnel:**

*(Issues regarding staff)*

Action:           There was a discussion held regarding personnel.

The Closed Session adjourned at 11:26 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its actions in the Closed Session, as indicated above. The meeting adjourned at 11:30 a.m.